should engage in the cement-contracting business without a license from the city council and without filing a bond with the city guaranteeing the proper construction of work undertaken by the licensee. *Held*, that the ordinance is unconstitutional. *State ex rel. Sampson* v. *City of Sheridan*, 170 Pac. 1 (Wyo.).

The proper exercise of the police power permits regulation in the interest of the peace, comfort, convenience, and prosperity of the community. See *The Minnesota Rate Cases*, 230 U. S. 352, 404. In the interest of the prosperity of the community certain lines of business endeavor may be regulated with a view to protecting the people thereof against their own improvidence and bad judgment. Thus dealers in investment securities may be licensed under the supervision of the state. *Hall* v. *Geiger-Jones Co.*, 42 U. S. 539. Similarly the practice of encouraging retail sales by means of "trading stamps" may be regulated. *Rast* v. *Van Deeman & Lewis*, 240 U. S. 342. But the rule of these cases does not go so far as to permit indiscriminate regulation of any business or occupation as such. Power to regulate should turn largely on the actual existence of the evil sought to be remedied and the magnitude thereof. Of necessity this is an elastic standard. Thus on the validity of license restrictions imposed on itinerant merchants there is a decision each way. *State* v. *Conlon*, 65 Conn. 478, 33 Atl. 519; *State* v. *Harrington*, 68 Vt. 622, 35 Atl. 515. Under this principle there is no occasion to quarrel with the decision in the present case.

PUBLIC LANDS — *BONÂ FIDE* PURCHASER OF CERTIFICATE OF ALLOTMENT — RIGHTS TO IMPROVEMENTS. — The issue of a certificate of allotment of lands under the Choctaw-Chickasaw Agreement was procured by fraud. The certificate was then sold to a *bonâ fide* purchaser. Upon discovery of the fraud the certificate was held for cancellation and the land allotted to others. The *bonâ fide* purchaser seeks by mandamus to have a patent issued to him. *Held*, that the writ should not be granted. *Duncan Townsite Co.* v. *Lane*, 38 Sup. Ct. Rep. 99.

A *bonâ fide* purchaser of a fraudulently obtained certificate of allotment of public lands who later and in good faith secures a patent is protected. *United States* v. *Clark*, 200 U. S. 601; *People* v. *Swift*, 96 Cal. 165, 31 Pac. 16. See 19 HARV. L. REV. 542. But if the purchaser has not secured the patent, and has only the certificate, he has merely an equity and is not protected against the legal owner. *Hawley* v. *Diller*, 178 U. S. 476. The principal case suggests the question of whether a *bonâ fide* purchaser of a fraudulently secured certificate, who in good faith improves the premises but fails to secure legal title, is entitled to any relief. The general rule is that if a person honestly believing himself rightfully in possession makes improvements he may set off the value of such improvements in any equitable action by the true owner. *Green* v. *Biddle*, 8 Wheat. (U. S.) 1. The theory is that the true owner must do equity if he seeks the aid of equity. But affirmative action on the motion of one who makes such improvements is denied. *Putnam* v. *Ritchie*, 6 Paige (N. Y.) 390. The theory is that whatever is attached to the land becomes a part of the land and belongs to the owner. The result is that justice is secured by invoking a technical rule in the one case, and that there is a failure of justice for the same reason in the other. This seems a desirable situation for an application of the principle of unjust enrichment. *Bright* v. *Boyd*, 1 Story (U. S. Dist. Ct.), 478, 2 Story (U. S. Dist. Ct.), 605. See 2 STORY, EQUITY JURISPRUDENCE, § 799 *b* (*n.*).

PUBLIC SERVICE COMPANIES — EXCUSES FOR NOT SERVING — FAILURE OF SUPPLY. — Relator applied for a connection to the respondent natural gas company. Before time to make the connection, there was a period of fifteen or twenty days of extremely cold weather; and, although the supply of gas

had for years been fully adequate, it was not sufficient to fill the abnormal demands made during this period. The Public Service Commission ordered the respondent to connect no more consumers, and pursuant to this order, the respondent refused the relator its connection. *Held*, that a writ of mandamus should be granted compelling the respondent to give the relator its connection. *Park Abbott Realty Co.* v. *Iroquois Natural Gas Co.*, 168 N. Y. Supp. 673.

For a discussion of this case, see Notes, page 1028.

PUBLIC SERVICE COMPANIES — REGULATION OF PUBLIC SERVICE COMPANIES — WHAT ARE REASONABLE RATES AFTER TERMINATION OF FRANCHISE. — After the expiration of a water company's franchise the city passed an ordinance fixing the rates to be charged by it, providing, *inter alia*, for annual hydrant rentals which were to include such hydrants as the Council might thereafter require. The company sued to have the city enjoined from enforcing this ordinance on the ground that the rates fixed were confiscatory. *Held*, that in determining the reasonableness of the rates the plant was to be valued as a plant in use, and the item of "going value" was to be considered. *City and County of Denver* v. *Denver Union Water Co.*, 38 Sup. Ct. Rep. 278.

The state has of course the right to regulate the rates of public service companies. *Spring Valley Waterworks* v. *Schottler*, 110 U. S. 347. In order not to constitute a taking of property without due process these rates must allow a reasonable return on the value of the company's plant. *Brymer* v. *Butler Water Co.*, 179 Pa. 231, 36 Atl. 249. The usual method of valuing the plant is to find the cost of replacement, deduct the depreciation, and add an item for "going concern value." The latter is the additional value of the plant over its value as an assembled plant due to the fact that it is in actual operation. In a rate case at least the fact that the company is or is not making profits is not to be considered as an item of "going value." *Des Moines Gas Co.* v. *Des Moines*, 238 U. S. 153; *National Waterworks Co.* v. *Kansas City*, 62 Fed. 853; *Spring Valley Waterworks* v. *San Francisco*, 192 Fed. 137. In the principal case the company's franchise had expired, and as between the parties the city had a right to compel the company to remove its pipes within a reasonable time. *Laighton* v. *Carthage*, 175 Fed. 145. It was argued for the city that the plant was therefore to be valued as junk and the item for going value was erroneous. But it would seem that the city's duty to the people would defeat its right to require a removal of the pipes until a substitute had been provided. In any event the city by its regulating ordinance in effect gave the company a license for an indefinite term. *Cedar Rapids Water Co.* v. *Cedar Rapids*, 118 Iowa, 234, 91 N. W. 1081. So long as this license continued the company was subject to regulation and bound to supply water. *Laighton* v. *Carthage*, *supra*. The plant was a going one and was properly valued as such. *Cedar Rapids Water Co.* v. *Cedar Rapids*, *supra*. The decision seems not only sound but eminently desirable.

STATE — SUIT AGAINST AN OFFICER NOT NECESSARILY SUIT AGAINST THE STATE. — Upon the insolvency of a bank against which the plaintiff held a certificate of deposit, the defendant who was Bank Commissioner under a Deposit Guarantee Plan, took possession of the bank and its assets. It was alleged that he exercised his power so arbitrarily and capriciously that plaintiff was damaged to the extent of his certificate of deposit. *Held*, that this was not an action against the state. *Johnson* v. *Lankford*, 38 Sup. Ct. Rep. 203.

That the Eleventh Amendment secures to the states immunity from private suits has long been established. *Hans* v. *Louisiana*, 134 U. S. 1. When a suit is against the state and when against an officer personally is not always easy to determine. The test — whether the state is a party of record — has long